WEBSTER COAL AND COKE COMPANY *v.* CASSATT.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 283. Argued October 28, 29, 1907.—Decided December 2, 1907.

An order of the Circuit Court under § 724, Rev. Stat., adjudging and decreeing that certain officers of the defendant corporation produce books and papers, held to be an interlocutory order in the suit and not a final order as against the individuals, and, therefore, not reviewable at their instance, on writ of error, by the Circuit Court of Appeals.
150 Fed. Rep. 48, reversed.

THE Webster Coal and Coke Company commenced an action at law in the Circuit Court of the United States for the Eastern District of Pennsylvania against the Pennsylvania Railroad Company, defendant, to recover damages for its alleged violation of the Interstate Commerce Act of February 4, 1887, by discriminating against plaintiff in the allowance of freight rates on coal and coke. The defendant pleaded not guilty.

of the petitioner to have the defendant's papers submitted to its inspection in advance of trial and left open no question or matter for further consideration or action by the court and it was final, therefore, both as to the defendant and those to whom it was directed. *Butler* v. *Fayerweather*, 91 Fed. Rep. 458, citing: *Mackeye* v. *Mallory*, 24 C. C. A. 420, *S. C.*, 79 Fed. Rep. 1; *Rouse* v. *Hornsby*, 14 C. C. A. 377, *S. C.*, 67 Fed. Rep. 219; *Gumbel* v. *Pitkin*, 113 U. S. 545, *S. C.*, 5 Sup. Ct. 616; *Central Trust Co.* v. *Grant Locomotive Works*, 135 U. S. 207; *Alexander* v. *United States*, 201 U. S. 117, discussed and distinguished.

MR. CHIEF JUSTICE FULLER, after making the foregoing statement, delivered the opinion of the court.

The Pennsylvania Railroad Company did not except to the order nor attempt to prosecute a writ of error therefrom if that were possible; the plaintiffs in error, who were officers of the company, excepted and carried the case up on this writ of error. They were not parties to the case between the Coal Company and the Railroad Company, had no property in the books and papers referred to, were mere custodians as officers, and any rights of theirs were not made to appear to be involved in the disclosures sought. The order as to them was purely interlocutory, not imposing penalty or liability, and not finally disposing of an independent proceeding.

What Mr. Justice Bradley said in *Williams* v. *Morgan*, 111 U. S. 684, 699, in holding a decree on intervention appealable, and citing many cases, was that the order appealed from there "was final in its nature, and was made in a matter distinct from the general subject of litigation,—a matter by itself, which affected only the parties to the particular controversy, and those whom they represented."

This order affected the plaintiff and defendant in the case itself, and not respondents as individuals at all, and if the court had power to punish disobedience or enforce compliance

then the order prior to such action on the part of the court was clearly interlocutory in the suit. *Alexander* v. *United States*, 201 U. S. 117. If the provision of § 724 in respect of disobedience of such an order was exclusive, then, of course, respondents were in no way aggrieved. *Doyle* v. *London Guarantee Co.*, 204 U. S. 599.

Whether the order to produce was valid, and whether it warranted judgment by default against the defendant company were matters in which plaintiffs in error had no concern. There was here no attachment for contempt, no judgment on default, and no independent and collateral proceeding, the order disposing of which could be considered as a final decree.

Judgment reversed and cause remanded with a direction to dismiss the writ of error.

PENNSYLVANIA COAL AND COKE COMPANY *v.* CASSATT.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 284. Argued October 28, 29, 1907.—Decided December 2, 1907.

Decided on authority of preceding case.
150 Fed. Rep. 48, reversed.

THIS case was argued simultaneously with, and by the same counsel as, No. 283.[1]

MR. CHIEF JUSTICE FULLER: For the reasons given in the preceding case the judgment is reversed, and the cause remanded with a direction to dismiss the writ of error.

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[1] *Webster Coal & Coke Co.* v. *Cassatt*, *ante*, p. 181.